



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,195	07/22/2003	Philip W. Dalrymple III	MDTI 2 00001 US	7713

7590 10/07/2008
Thomas E. Kocovsky, Jr.
FAY, SHARPE, FAGAN, MINNICH & McKEE, LLP
Seventh Floor
1100 Superior Avenue
Cleveland, OH 44114-2518

EXAMINER

NGUYEN, VAN H

ART UNIT	PAPER NUMBER
----------	--------------

2194

MAIL DATE	DELIVERY MODE
-----------	---------------

10/07/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/624,195	Applicant(s) DALRYMPLE ET AL.	
	Examiner VAN H. NGUYEN	Art Unit 2194	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is responsive to the application filed 07/22/2003.

Claims 1-29 are presented for examination.

Oath/Declaration

2. The Office acknowledges receipt of a properly signed Oath/Declaration submitted 07/22/2003.

Drawings

3. The drawings filed 07/22/2003 are accepted by the examiner.

Specification

4. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

The abstract is objected to because it does not comply with 37 CFR § 1.72.

(b) A brief abstract of the technical disclosure in the specification must commence on a separate sheet, preferably following the claims, under the heading “Abstract” or “Abstract of the Disclosure.” The sheet or sheets presenting the abstract may not include other parts of the application or other material. The abstract in an application filed under 35 U.S.C. 111 may not exceed 150 words in length. The purpose of the abstract is to enable the United States Patent and Trademark Office and the public generally to determine quickly from a cursory inspection the nature and gist of the technical disclosure.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 11-23 and 26-29 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. under 35 U.S.C. 101

The method claim 11 differs from traditional process claims in several respects. For example, the claim does not recite any particular way of implementing the step, nor does it require any machine or apparatus to perform the step. In addition, the method claim

does not recite any electrical, chemical, or mechanical acts or results, which are typical in traditional process claims. Finally, the claim does not call for any physical transformation of an article to a different state or thing. While claim 11 performs “*monitoring*” and “*generating*”, it does not require any machine or apparatus to perform the step. Because the claim is completely untethered from any sort of structure or physical step, it is directed to a disembodied concept. In other words, the claim is nothing but a disembodied abstract idea until it is instantiated in some physical way so as to be limited to a practical application of the idea. For example, claim 11 does not specify whether the entity performing the steps of “*monitoring*” and “*generating*” is a computer, a human, or something else. Accordingly, the claim is so broad that it is directed to the abstract idea itself, rather than a practical implementation of the concept. Accordingly, the claim is so broad that it is directed to the abstract idea itself, rather than a practical implementation of the concept. In addition, the claim is “so abstract and sweeping” that it would “wholly pre-empt” all applications (whether performed by a machine or a human) that are directed to the steps of controlling an instance of an event-driven application program. *See Benson*, 409 U.S. at 68-72, 175 USPQ at 675-677; see also *Alappat*, 33 F.3d at 1544, 31 USPQ2d at 1558 (quoting *Benson*).

For the same reasons discussed supra with respect to method claim 11, the method claims 12-20 and 26-29 fall outside the scope of § 101.

Regarding independent claim 21, the claim recites a “**system**” comprising “an operating system”, “an application program”, and “a control program”. As currently recited the “system” comprises only computer software element(s). Thus, the claim is a program per se and does not fall within any of the four enumerated categories of patentable subject matter in section 101.

For the same reasons discussed supra with respect to independent claim 1, dependent claims 22 and 23 fall outside the scope of § 101.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-29 are rejected under 35 U.S.C. 102(e) as being anticipated by **Yan et al.** (US 20040103438 A1).

As to independent claims 1, 11, 17, 21, 24, and 26:

Somers teaches [0021]: Events can be generally categorized as: *control events and data events*. *Control events* carry control information to *change the execution behaviors* of

other components, locally or remotely. Data events carry content data to inform other components of content changes; [0024]: TCP can be used to precisely transfer ***control events*** (e.g., ***keyboard and mouse events***) as well as other high precision events, such as changes in graphics applications, and RTP can be used for streaming frame buffer (video buffer) and sound buffer updates; [0032]: the ***event filter*** 220 of FIG. 2 categorizes ***events*** into the following types: 1) ***control events that are generated by keyboard input or cursor*** (e.g., mouse) movement, for example; 2) window movement ***events that are generated by window movements*** in which window content is unchanged; 3) window updates that are generated by a change in window content; and 4) audio samples that are captured from a change in the sound buffer of the audio driver 204. In this embodiment, ***control events*** are forwarded to the ***control event queue 231***; window movements are forwarded to the window movement queue 232; window updates are forwarded to the windows update queue 233; and audio samples are forwarded to the audio sample queue 234; see also, the discussion at [0033]- [0046].

As to dependent claims 2-10, 12-16, 18-20, 22, 23, 25, and 27-29:

Somers teaches the limitations as recited in the claims (see Figs.1-7 and the associated text).

Conclusion

7. The prior art made of record, see PTO 892, and not relied upon is considered pertinent to applicant's disclosure. Applicant should review these references carefully before responding to this office action.

Contact Information

8. Any inquiry or a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: (571) 272-2100.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VAN H. NGUYEN whose telephone number is (571) 272-3765. The examiner can normally be reached on Monday-Thursday from 8:30AM 6:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MENG-AI AN can be reached at (571) 272-3756.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/VAN H NGUYEN/
Primary Examiner, Art Unit 2194**